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STANDARDIZATION OF LAW BRIEFS.*

Efficiency in administration of a business demands the standardization of the forms commonly used in carrying on the business. The law, on its administrative side, is a business and many of its forms have been and should be reduced to the simplest terms and standardized. In this category belong the briefs and records filed in appellate courts. There is no reason why these documents should differ in shape, size and even in color.

A recent investigation has shown that there are forty-seven varieties of law printing in the various federal and state courts of the Union—only ten less than a certain much-advertised brand of pickles; that in seven states the form of such printing is prescribed by statute; that in forty-one states it is regulated by rules of court formulated by the judiciary; that, of the nine circuits of the United States Circuit Court of Appeals, eight have rules, each differing from the other in one or more particulars, and one has no rules whatever, if we except a suggestion by the clerk that the record and briefs *in a particular case,* should be of the same trimmed size! The beautiful symmetry of the files of this latter court can be left to imagination. In several state and federal courts the paper size is fixed by rule, but the type page may vary from three and two-thirds to five inches in width.

There remain the various federal courts of special jurisdiction, Patent Office, Court of Claims, Court of Customs Appeals and the many state commissions, public service, industrial, etc., each with its own rules for printing, when and where required, and each set of rules compiled without reference, in most cases, to the rules of any other tribunal.

*This editorial was written in December, 1921, by Mr. Robbins—his last work for the Journal.

In many jurisdictions rules are still in operation long after the original reason for the rule has ceased to exist. Some of these reasons, now obsolete, were based on substantial grounds of practical convenience. Others on the physical infirmities of superannuated jurists and even on accidental injury. As an instance of the former, one court required "a three-inch margin," presumably for the convenience of the judges in making notes. The judges of this court now have private secretaries to whom their notes are dictated and the margin—which is still required by statute—remains unsullied by pen or pencil.

In another court all records are required to be "sewed"—a rule, we are informed, which had its origin in the fact that, many years ago, one of its judges had his finger scratched by a wire staple, the wound subsequently becoming infected.

It would require much space to enumerate, in detail, the many statutes, rules and practices which govern the printing of records and briefs in the United States. Suffice it to say that they result in the use of a type page ranging from three and one-half to six inches in width, and from six to eight inches in length, and a paper page of from five and seven-eighths to eight and one-half inches in width and from nine to eleven inches in length. The promiscuous result may be seen upon the shelves of any library of national scope.

The standard suggested by the National Association of the Law Printers' Division of the United Typothetae of America is type page, 4x7 inches; paper page, 6x9 inches. In a printed appeal which this Association presented to the American Bar Association in Cincinnati last August, the following advantages of establishing such a standard were set forth, namely:

(1) The size suggested is accepted, although not exactly conforming to the general practice, by the Supreme Court of the United States.

(2) Enough copies of any record, document or exhibit could be printed in the

first instance, at a minimum cost, to go to the highest court.

(3) Uniformity for filing bound or unbound copies among office records.

(4) Lack of confusion in giving instructions to printer as to size of type and paper page. Just one rule to follow. No necessity of looking up separate rules of court for every state in the Union and, sometimes, the rules of four or five courts in a single state.

(5) Easier to handle, lighter weight, than larger sizes.

(6) Less expense in mailing copies.

(7) More words to the page, hence fewer pages than is now the case in a number of states where the rules call for a type page three and one-half, three and two-thirds or three and five-sixths inches in width.

(8) A standard will make possible the binding into volumes of uniform size and style the printed records and briefs of any and all courts. This will make for a more sightly appearance of the library shelves of the attorney than is now possible. Filing cabinets would be of uniform size.

(9) When the printer had overcome the first cost of adjusting his plant to the standard, prices would tend to a uniform and *lower* level.

This standard form of brief will also make it possible for the printers themselves to do their work with more accuracy and with a saving of time and labor, resulting in a corresponding reduction in the expense.

The suggestion for a standard form of brief was referred by the American Bar Association to its Executive Committee and that Committee, after a hearing given to representatives of the United Typothetae, referred the matter for definite action to a sub-committee composed of Thomas W. Shelton of Norfolk, Va., and Chief Justice Thomas C. McClellan of Montgomery, Ala. This committee has, it has been reported, already decided to recommend the standardization of briefs. It will report the details of the proposed plan to the mid-winter meeting of the Executive Committee, to be held at Tampa, Fla., in the second week in January. We sincerely trust that some plan may be agreed upon to secure the standardization of briefs and records and our interest in this matter lies not so much in the immediate benefit of this one standard as in the hope that it will call attention to other defects in the administration of law where more efficient methods and forms of procedure are desirable.

A. H. ROBBINS.

NOTES OF IMPORTANT DECISIONS.

DUTY OF DRIVER OF AUTOMOBILE OBSTRUCTING VIEW OF PERSONS FOLLOWING TO WARN THEM OF DANGER AHEAD.—In the case of Simpson v. Snellenburg, 115 Atl. 403, decided by the Court of Errors and Appeals of New Jersey, it appeared that Simpson, Jr., and his father, sued the defendants to recover damages for injuries sustained by the former while riding a bicycle on a public road. The son, a lad of sixteen years, accompanied by four companions, on bicycles, was riding along the road when a motor delivery truck, belonging to the defendants, passed them. Besides the defendant's chauffeur, who operated the truck, there was a helper sitting in the rear looking back. From the time the motor truck passed the boys to the time of the happening of the accident they rode behind the truck at a distance of twelve to twenty feet. The testimony was undisputed that the chauffeur of the truck knew that the boys were following behind, and that the enclosed body of the truck was of such size as to practically shut off visibility to those behind of vehicles which were approaching from the opposite direction. The truck was moving rapidly and the boys were trying to keep up with it. As they were going down a long incline the driver of the truck observed a farm wagon standing across the road; also beyond it, coming rapidly from the opposite direction, six or seven touring cars. He attempted to pass around the farm wagon before the passing point was reached by the touring cars, and, discovering when he was almost on top of the farm wagon that he could not accomplish his purpose, he put on his brakes with full force and came to a sudden stop within a few feet of the farm wagon. He did this without any warning to the boys, whom he knew were closely following him. Three of them, in order to avoid colliding with the

truck, undertook to pass to the right, with the result that they piled upon one another in a ditch alongside the road. The plaintiff, observing this and warned by his companions' fate, and in order to avoid a mishap, turned to the left just as the first of the string of touring cars observed by the operator of the truck was passing the farm wagon, with the result, though Simpson kept as near the delivery wagon as practicable, he was hit by the touring car and seriously injured. There was judgment for the plaintiff, in affirming which, the Court said:

"Operating a motor truck which obscures a vision along the public highway to such an extent as to prevent those driving or riding behind such vehicle from observing conditions which ought to be known to them, in order to reasonably insure their safety of life and limb, casts a duty upon the driver of such vehicle to use a reasonable degree of care that timely and ample warning be given of approaching danger to those whose view of the impending peril he obstructs. That being the measure of the operator's legal duty, it is difficult to perceive how under the evidence it can fairly be maintained that the plaintiff was guilty of contributory negligence.

"For the applicants it is strenuously urged that the plaintiff by riding behind the moving truck within a distance of 8 to 20 feet was guilty of negligence per se. The adoption of such a view would result in disastrous consequences to public travel, by preventing the free use of our public roads for all kinds of vehicular traffic and materially impede the proper running of vehicles for both business and pleasure. For it is a matter of common knowledge that conditions of traffic often become such that vehicles are necessarily much closer to each other than 8 feet, and therefore must be run and guided as to their speed by the vehicles ahead, and to denounce such conduct as negligent per se cannot be justified in good sense. The mere fact that a vehicle is moving in close proximity to a moving vehicle ahead and keeping up with it does not of itself constitute negligent conduct per se, but whether or not it was the negligence of the operator of the rear vehicle contributing to the negligence of the driver ahead in case of an accident to the former depends upon all the circumstances surrounding the happening of the accident, and almost invariably presents questions of fact for the decision of a jury.

"The plaintiff had a right to assume that the truck driver was using reasonable care to observe the condition of the traffic ahead, and would so operate and regulate the speed of the truck so as not to endanger those who were driving or riding in his rear and whose view up the road and of the approach of vehicles was shut off by the truck, and that the driver would use reasonable care to give timely and ample warning of any danger ahead, so as to afford them an opportunity to halt their bicycles in time to avoid running into the truck, or at least to turn into a place of safety. That the truck driver failed in his duty in that regard, and thus practically by his negligent conduct lured the plaintiff and his companions into a dangerous situation, appears clearly from the evidence. As a consequence of such negligent conduct, the plaintiff and his companions were overtaken by an unforseen and sudden peril, which called upon them, on the instant, in a state of mind more or less distracted by the impending peril, to exercise their best judgment to reach a place of safety, with the result that those turning to the right fell on top of one another into a ditch alongside of the road, whereas the plaintiff, to avoid the mishap of his companions and to avoid injuring them and himself, turned to the left, hugging closely as practicable the side of the truck, only to be met and struck by an approaching automobile which was hidden from his view by the truck. The plaintiff in the circumstance in which he found himself was not bound to exercise an infallible judgment as to what course to take to escape threatening and imminent danger; all that was required of him was to exercise that degree of care for his safety as an ordinary prudent person, suddenly overtaken by a peril, in a similar situation, would have taken, and that presented clearly a jury question."

WHEN COMPENSATION IS DUE FOR INJURIES OR DISEASE ARISING OUT OF EMPLOYMENT.—SOME ENGLISH CASES.

A writer in the Law Times Journal—to which we gratefully acknowledge our indebtedness for the summaries of the decisions referred to below—aptly observes that there seems to be no diminution year by year in the number of cases on workmen's compensation, and no end to the variety of circumstances discoverable in them. We propose here to give the leading judgments lately issued in this branch of the law in the hope that the principles which they bring out—so far, that is, as such cases can be brought under principle—may prove serviceable to our readers.

Selvage v. Charles Burrell and Sons, Limited,[1] was the case of a girl who sustained a series of scratches often followed by gatherings, and the pus formed gradually induced blood poisoning. Ultimately arthritis set in and total incapacity. This was held by the Court of Appeal to be an accident arising out of and in the course of the employment as a finisher of shell adapters. The case is rather unique in its

(1) 124 L. T. Rep. 428; (1921) 1 K. B. 355.

facts. The Court of Appeal treated each scratch as an accident, and did not feel burdened by the contention that a finger could not be placed on any one scratch as being that which produced the septic condition. The Court of Appeal differentiated this case from those where there has been an inhalation of sewer gas or the like, where it has been held that the condition was either the result of disease or was not the result of accident. In this case Lord Sterndale considered that the condition was indubitably the result of accidents arising out of and in the course of the employment, and that the accident was none the less one because there were many scratches all contributing to the septic condition. Lord Justice Scrutton, in delivering a concurring judgment, employs some rather unusal reasons for so doing. He observes: "If my words are to be the same, I need not say them; but if I expressed myself in different words the effect would only be to enable reporters and ingenious council in other cases to make them a ground for further argument."[2]

Reid v. British and Irish Steam Packet Company, Limited,[3] raised the question of liability where a docker had wilfully assaulted a foreman supervisor. An attack was made by the docker on the foreman, who had to pull him up for negligence, and his right eye was rendered sightless, and, having impaired vision in the other eye, he was totally incapacitated. There was evidence that the dockers were men of a low, rough type, but assaults on foreman had not previously occured. The question was whether this constituted an accident arising out of the employment. The Court of Appeal agreed with the county court judge that it did, and it is now becoming established that acts of violence, deliberately intended to injure, though not accidents from the point of view of the person who inflicts the injury, may be accidents from the point of view of the person who suffers the injury, and it seems a question of fact in each case whether the risk of assault is one common to all persons, or whether there is some special risk of assault to the particular person arising from his employment.

A very curious incident in an ordinary householder's kitchen was narrated in Hannafin v. Fitzmaurice,[4] where a cook, walking across the kitchen to get water, found her slipper coming off. She stooped to try to put it on, slipped in so doing, and fell on her knees and hurt her thigh. The County Court judge found that the accident arose out of and in the course of the employment, but on appeal, the Court of Appeal in Ireland came to the conclusion that the only possible inference of fact was that the slipper was a misfit or improperly attached to the foot, and that, in stooping to adjust it, the fall supervened. Sir James Campbell, C. observed that in these conditions, as proved by the applicant herself, if such an accident were held to arise out of the employment, it would be impossible to avoid the conclusion that every domestic servant, so long as she is inside her employer's house, is insured against any accident, and that this result would necessarily follow if the employer were liable in this case, where the accident arose, not from any risk occasioned by the condition of the premises, or by the work in which the girl was engaged, but from the risk solely due, so far as the evidence goes, to the state of her own wearing apparel. Lord Justice O'Connor thought that a domestic servant, engaged on the master's business, who slips while crossing a floor and falls might be said to sustain an accident arising out of the employment, but that was not the case before him, where the applicant was wearing an ill-fitting slipper, and the slipper, not the floor, was the cause of the accident.

Archibald Russell, Limited v. Corser,[5] raised before the House of Lords a question relating to an industrial disease. The workman had been employed in breaking up blocks of pitch for the manufacture of briquettes, and by reason of his employment his right eye became affected and had to be

(2) This decision was approved by the House of Lords (152 L. T. Jour. 17).

(3) 125 L. T. Rep. 67; (1921) 2 K. B. 319.

(4) (1921) 2 I. R. 44.

(5) 124 L. T. Rep. 548; (1921) 1 A. C. 351.

removed. After the removal the surgeon gave a certificate of disablement stating that the man suffered from an industrial disease, *viz.*, ulceration of the corneal surface of the eye due to pitch, and he further certified that the loss of the eye was due to corneal ulceration. The medical referee confirmed this certificate after, in the first place, having written a letter in which he expressed inability to decide in the absence of the eye as to the disease which had affected it. A question arose on sect. 8 (1) of the Workmen's Compensation Act 1906 as to the construction to be put on the words: "Suffering from a disease mentioned in the third schedule"—*i.e.*, an industrial disease. An extraordinary feature of the case was that the eye was removed nearly a month before the certificate, and it sounds a bit odd to affirm that a man's right eye was suffering from a disease at a time when he had no right eye. The House, however, declined to read "is suffering from" too narrowly, for so to do might lead to disastrous consequences. Thus in the case of some emergency operation involving amputation of a leg or arm, the effect of such a construction might easly be to deprive the workman of all remedy where the amputated limb was the headquarters of the industrial disease. It will be seen, therefore, that "suffering from" some disease may in this connection be construed as "suffering from the results of surgical operation properly incident to the treatment of the inlustrial disease."

Another industrial disease case with rather curious medical testimony arose in Turton v. East Burnsley Colliery, Limited[6] A miner suffered from nystagmus, and the certifying surgeon certified that he was disabled from earning full wages. The employers were aggrieved at this, and applied for a reference to a medical referee under sect. 8 (1) (f) on the ground that the man had suffered from the same disease before he entered their employment and had been receiving compensation from his former employers .The medical referee allowed the appeal. On the hearing of the arbitration the employers objected that the decision of the medical referee was final, and that the proceedings were not maintainable. The answer made to this was that the award of the medical referee was invalid either for uncertainty or else because, looking at the award and the request for reference to the referee together, it would appear that he might have decided on grounds on which he had no right to decide. The Court of Appeal held that the arbitration proceedings were maintainable, and that the medical referee had come to the conclusion that the employers were not responsible. This was held to be a wrong ground. Medical retererees have nothing to do with questions of responsibility, but all they have to do is to asertain whether a person is suffering from this or that, whether it was connected with the trade, and whether inability to earn full wages results therefrom, together with the date of the disability. This decision is quite important in showing medical referees the borders of their jurisdiction. Lord Justice Scrutton, on the other hand, rather blames the referee who gives too slavish adherence to the forms. He would have him add to or vary them, and not merely say that he allows or dismisses an appeal, as the case may be, leaving it quite uncertain what he has done, or whether an allowance is under head 1 or 2 or 3. The Lord Justice would have the referee to say what he is deciding on the point whether the workman is suffering from the disease, and on the point whether he is disabled from earning full wages, and on the point as to the date of the disablement. If he does that, his decisions are enlightening; but when he simply says, "I allow or dismiss the case," there is a tendency to create difficulties.

Another case turning upon a workman's refusal to undergo an operation is of great importance, for it is a House of Lords decision on a question which would, in the minds of every reader, cause a very nice balance of opinion. In Fife Coal Company

(6) 124 L. T. Rep. 439; (1921) 1 K. B. 369.

v. Cant[7] there was an appeal from Scotland. A miner sustained injury to a thumb by a stone falling from the roof, and was totally incapacitated by reason of this for some time and was awarded compensation. Later on he started light work and was partially incapacitated. The employers sought to end the compensation on the ground that a surgical operation would put him right and that he refused to undergo it. The evidence showed that the man's own doctor advised him not to undergo it, as the amputation of the thumb would be dangerous, and that it would be impossible to make the thumb to move. The Lord Chancellor thought that when doctors were differing there was room for a nice balance of opinion as to which advice should be taken. Under such circumstances he declined to lay down any doctrine, and thought that the arbitrator was correct in coming to the conclusion that the incapacity was not due to unreasonableness on the part of the man in refusing to undergo an operation on the advice of his own doctor.

DONALD MACKAY.

Glasgow, Scotland.

(7) 124 L. T. Rep. 545; 65 S. J. 204.

"MAY OWNER OF 'ONE-MAN' CORPORATION SET-OFF CORPORATE DEMANDS IN PERSONAL SUIT?"

In discussing the above proposition a very simple statement of facts will be adopted, a situation common enough to be duplicated almost daily in different parts of the United states.

Allowing R. Co. to represent a legally organized corporation, all shares in the company being owned by, and vested in B., who holds himself out as president, and general manager of R. Co., we will suppose that B. as general manager, needing funds to carry into effect some of the corporate purposes of R. Co., secures from N. Bank a loan. As evidence of the indebtedness a note is executed naming the R. Co. as maker by B. as president. Before payment of the money represented by the note B. endorses same personally to secure the payment.

The R. Co. maintains a checking account at N. Bank, where the proceeds from the note are deposited. Before the maturity of the note a dispute as to R. Co.'s account with N. Bank arises, the R. Co. contending that improper and illegal payments have been charged against its account.

Upon the maturity of the note, after due presentment for payment etc., and refusal on part of R. Co. and B., N. Bank commences suit against B. upon his endorsement, with a view of avoiding any possibility of a set-off being interposed to liquidate the disputed account of R. Co. In due course the defendant B. files a plea to the declaration, alleging that he is president and owner of R. Co., a corporation, and offering to set-off the disputed items in the checking account of R. Co. A demurrer is interposed raising the objection that the plea offers no legal defense to the suit as the subject matter does not exist mutually between the parties to the cause.

The Florida statute on this subject is probably a fair example of such statutes as they exist in most jurisdictions, and in order to secure the advantage of a certain and definite proposition to work with it will be regarded as the final criteria in this discussion. Our statute provides:

"All debts or demands mutually existing between the parties at the commencement of the action, whether the same be liquidated or not, shall be proper subjects of set-off, and may be pleaded accordingly.

"The defendant, at the time of filing of such plea, shall file therewith a true copy of the subject matter of such set-off; and upon the trial of the cause, in case the jury shall find a balance for the defendant, such defendant may claim a judgment for the same, and take out execution accordingly."[1]

Under the statement of facts given two

(1) Section 2660, Revised General Statutes Florida 1920.

positions may be insisted upon by the defendant to sustain his plea: (a) Right to set-off, because "owns" corporation. (b) Right of surety to set-off demand due the principal. (B. considering that he is surety for the payment of the note of the corporation.)

Answering the two positions in the order given:

(*A*) Under this statute it is contended that in order for a defendant to avail himself of a plea of set-off, four conditions surrounding the debt or demand sought to be set-off must concur: (1) Must mutually exist, (2) Between the parties to suit, (3) At commencement of the action, and (4) Must be between the parties in the same capacity in which they are suing and being sued.

It is urged that the above propositions form a basis, a substratum of this branch of the law, without a recognition of which the questions submitted for consideration cannot be intelligently and correctly determined. It is perhaps superfluous to say that these principles are only a reiteration of the long established and uniform decisions of the Courts, viz:

"When the defendant has, against the plaintiff, a cause of action which might be maintained as an independent suit, each cause of action is admissible as a set-off, provided that the cause of action consists of a debt or demand that exists mutually between the parties to the suit at the commencement of the suit. There was no such defense at common law as set-off and it can be allowed only by statute."[2]

"In construing statutes such construction should be adopted as makes it possible to give effect to all words."[3]

"Set-off allowed only between the parties to the suit"[4]

"....and our statute on the subject requires, we think, that the demands shall be between the parties of the suit at the commencement of the action."[5]

"The right of set-off is dependent entirely upon statute, and the construction we put upon ours is that, at law the demands that may be set-off must mutually exist between the parties to the suit at the time of the commencement of the action."[6]

"Must exist (set-off) in same right in which he (defendant) is being sued."[7]

The last mentioned case was one in which a man sued personally attempted to set-off a claim due to him as a trustee; this was disallowed, as was a plea involving the rights of an individual and a partnership in Hooker v. Forrester,[8] a partnership liability was attempted to be set-off in a personal suit, and the court affirmed an order striking pleas because of lack of mutuality.

It is impossible to get away from the fact that a corporation is a legal entity separate and distinct from the incorporators and persons owning the stock therein, even though one may own all of the certificates. It is this entity of the artificial person that taints the proposed set-off with the want of mutuality.

"On the creation of a corporation,....., the individuality of the corporators or members is merged in the corporate body and the corporation becomes in law, and for most purposes, a legal entity or artificial person entirely distinct from its members and its officers, so that its acts through its members and its officers, or agents, are regarded as the acts of this legal entity or artificial person as distinguished from the members who compose it, and the property or rights acquired, or the liabilities incurred, by it are regarded as its property, rights and liabilities of such distinct legal entity; this doctrine applies even in the case of a corporation sole, or a corporation aggregate whose shares are all owned by one or a few persons,"[9]

(2) Birmingham Trust & Saving Co., v. Jackson, etc., Fla. 27 Southern 45, at page 45 (bottom.)

(3) Ibid. 2nd column, top 45.

(4) Hooker v. Gallagher, 6 Florida 351, at 356.

(5) Birmingham Trust Co. etc., Supra, at top 46.

(6) Idem. middle 46.

(7) Lucas v. Wade, 5th headnote; 31 Southern 231, opinion 234.

(8) Hooker v. Forrester, 43 Southern 241.

(9) Corporations, 14 C. J. Section 5.

"The demands of stockholders individually cannot be interposed as equitable set-offs to a demand against the corporation even though the plaintiff is insolvent. Nor can a demand against the stockholders or members of a corporation be set-off or pleaded as a counterclaim in an action by the corporation."[9a]

The mere fact that the R. Co. is a "one man" corporation cannot alter the substantial requirements of law in regard to set-off as has been held in Louisiana when the Court said:

"A defendant sued for a debt due by him, cannot plead, in compensation thereof, a debt alleged to be due by the suing creditor to a corporation of which he (defendant) is a (majority) stockholder, since a compensation takes place only when it happens that both plaintiff and defendant are indebted to each other."[10]

It would seem therefor that the court would commit no error in sustaining the demurrer to defendant's plea upon proposition "A", but would only carry out the clear and indisputable policy of the law.

(*B*) The position insisted upon in proposition "B" is equally as untenable. It is the general rule that the surety when sued alone cannot set-off a debt due his principal from the plaintiff.[11-12] Although it is allowed by consent under some statutes.[13]

"Principal determines use to be made of independent claim of his against the plaintiff, defendant surety cannot elect what use to be made of claim."[14]

"The general rule is that no one can set up a claim of recoupment by way of defense unless he could have enforced the alleged liability by a direct action thereon."[15]

"A surety sued on his obligation cannot avail himself of an independent cause of action existing in favor of his principal against the plaintiff as a defense or counterclaim, as it is for the principal to determine what use he will make of it and surety has no control over it."[16] The court in this case suggests equity as a possible forum in which to find relief.

Under the statute, Section 2660 the jury may find a balance for either party, the defendant may have judgment and execution. In this case under the plea of set-off interposed by B. the right of a person not a party to the suit is involved. The jury may pass on this question and how may that be if the R. Co. is not before the court?[17] Also Elliott v. Brady, supra, where the court says:

"It is doing the creditor a manifest wrong to leave him exposed to the uncertain fate of meeting a defense to his action wrongfully brought, the authority to make which may or may not be accorded by the corporation."

In this case at bar B. could not have successfully maintained an action in his, (1) Own name and for his (2) Own benefit, as he is in law a stranger to the alleged set-off.

"A. contracted with X. to furnish a machine and also A. guaranteed its capacity. C. furnished materials. In a suit C. v. X. for materials furnished, X. cannot recoup v. C. the failure of A's warranty. Either X. not liable at all to C. or he is liable independent of A's warranty. The guaranty cannot be tried between them."[18]

Where a surety is allowed to plead a set-off against plaintiff's claim which is personal to the principal, it is by permission of statute, or in a suit in equity where plaintiff is insolvent.[19]

"Where damages sought to be recouped are averred as having been sustained, not by defendants, but by their alleged prin-

(9-a) Ibid, Section 16.

(10) Ballard v. Thomson, La., 71 Southern 505.

(11) For a general discussion see 24 R. C. L. Sections 62, 64, 65, 66.

(12) Scholtz v. Steiner, Ala., 14 Southern 552, allowed by statute in this case, but court lays down general rule as given above.

(13) Gibbony v. Wayne, Ala., 37 Southern 436, general rule given again and the statute held not applicable.

(14) Elliott v. Brady, 192 N. Y. 221, 85 N. E. 69, and 31 Ann. Cas. 386, in note with other cases to same effect.

(15) Graham v. Middleby et al. 213 Mass. 437, 100 N. E. 750, 31 Ann. Cas. 384, and excellent note that carries the matter out with all its possible refinements.

(16) Elliott v. Brady et al. Supra.

(17) Note 12, Am. Dec. 133, and Graham v. Middleby, and Elliott v. Brady, et al. supra.

(18) Tully et al v. Excelsior Iron Works, 5 N. E. 83.

(19) Schulze v. Steiner, supra, also notes overwhelmingly to same effect in 9 L. R. A. 108, and 2 L. R. A. 273.

cipals, who are strangers to the action, the plea of recoupment is subject to demurrer. To be available must be owned in absolute right.[20]

"The plaintiff and defendant must have simultaneous causes of action, and ownership of claim is very essence of the right of set-off. It is indispensable."[21]

Wherefore it is maintained that the second as well as the first propositions insisted upon by B. to support his plea of set-off must be answered in the negative by sustaining the demurrer. Both positions are erroneous as demonstrated by principle, and authority, and the simple reasons of natural justice, as observed by the courts in dealing with rights between man and man.

DEWEY A. DYE.

Bradentown, Fla.

(20) Gibboney et al v. Wayne, Ala. 37 So. 436.

(21) Brenner v. Gilmore, Ala., 31 So. 90 and cases, also Jones et al v. Blair, 37 Ala. 457.

INSURANCE—JITNEY BOND.

INTERSTATE CASUALTY CO. OF BIRMINGHAM v. MARTIN.

234 S. W. 710.

Court of Civil Appeals of Texas. Beaumont. Oct., 1921.

Under casualty bond, required by ordinance, covering an automobile in jitney service on a certain specified city route, there was no liability for death caused by the automobile two blocks away from and off the specified route, while the automobile was not being operated in the jitney service; the provisions of the ordinance, license, and bond authorizing the use of the automobile on the specified route constituting a limitation on the promise to pay.

Action by Charles Martin against the Interstate Casualty Company of Birmingham and another. From judgment for plaintiff, the named defendant appeals. Reversed and rendered.

O'QUINN, J. This suit was instituted in the district court of Harris county, Tex., by Charles Martin, against the Interstate Casualty Company and Fred Martin, for damages on account of the death of the minor son of the plaintiff, which was caused by being struck by an automobile belonging to defendant, Fred Martin; said accident occurring on Hardy street in the city of Houston.

The case was tried before a jury upon special issues, all of which the jury answered in plaintiffs' favor except one. Motions were duly filed by the defendants for judgment in their favor, which were overruled by the Court and judgment entered in favor of plaintiff against Fred Martin in the sum of $2,917, the amount of damages found by the jury, and against the Interstate Casualty Company for the sum of $2,500, the limit of its liability, said judgment providing that execution should first issue against defendant, Fred Martin, and if the judgment was paid then no execution should issue against the defendant Interstate Casualty Company, but if the execution was returned nulla bona, then execution should issue against Interstate Casualty Company for the satisfaction of the judgment to the extent of $2,500. Motions were also filed by defendants, before judgment was entered on said special issues, to set aside the verdict of the jury and grant a new trial, which were by the Court overruled. Motion for new trial was duly filed by defendants, and also overruled by the Court, to all of which rulings of the Court and judgment the defendant Interstate Casualty Company alone has appealed, and the case on behalf of said defendant is properly before us for review. There is no brief for appellees.

Appellant presents four assignments of error, all raising the following proposition of law:

"The liability of the Interstate Casualty Company being predicated and dependent upon the operation of a particular jitney car in the jitney service over a designated route, which in this instance was the Montgomery Avenue route in the city of Houston, and the evidence showing without dispute that the accident involved in this suit occurred off of the Montgomery jitney route and while the car was not being operated in the jitney service, there was clearly no liability on the part of the Interstate Casualty Company on its bond, and the court should have so held."

In the language of appellant, in considering these assignments, it is necessary that we bear in mind the following matters:

(1) The right of the jitney involved in this case to be operated over the streets of Houston depended upon the city ordinances of the city of Houston. These ordinances provided that an application must be made to the city council for a license to operate a jitney, and in the application the applicant must state over which route the jitney was to be operated.

(2) The ordinances further provided that the city council should from time to time speci-

fy and designate said routes, to operate over which permits would be granted.

(3) The city ordinances further provided that before a jitney would be granted a permit, it must file a bond similar to the one issued in this case by the Interstate Casualty Company.

(4) The undisputed evidence in this case showed: (a) That the defendant, Fred Martin, complied with the city ordinances by filing application for a permit to operate a jitney; (b) that in this application and permit granted thereon, the Montgomery route was designated as the line over which the jitney would be operated; (c) that the bond sued upon in this case was issued by defendant, Interstate Casualty Company, to the defendant, Fred Martin, in compliance with the requirements of the ordinances.

(5) The bond issued by the defendant, Interstate Casualty Company, provided in the "Schedule of Warranties" that the kind of work for which the automobile was to be used was jitney service on the Montgomery route; and further provided, in subdivision 9 of the Schedule of Warranties, as follows:

"No automobile is to be rented or used to carry passengers for hire except as follows: *Jitney service only on route specified above.*"

Appellant contends that as the undisputed evidence showed that the accident occurred while the jitney was not on the Montgomery route, then the Interstate Casualty Company was not liable because the bond it had issued provided that it was to cover the jitney while being operated on the Montgomery route, and no other, and therefore the question to be determined is one of law, and that the rights of the defendant, Interstate Casualty Company, should be passed on solely in accordance with the contract made by it as evidenced by the terms of its bond, and that since the bond was issued in compliance with the city ordinances, said city ordinances should be read into and become a part of said bond.

We believe that the contention of appellant is sound, and that the assignments should be sustained. There is no dispute as to the facts. They show that the city of Houston, by ordinance, had regulated the operation of jitneys within its bounds; that said city, under the provision of said ordinance, was divided into jitney routes, each specifically numbered and set out by metes and bounds; that defendant, Fred Martin, had applied for and received license from the city to operate a jitney on and over route 5, known as the Montgomery route; that said route embraced no part of Hardy street, but that the point on Hardy street where the accident occurred was two blocks distant from said Montgomery route; that the jitney, at the time of the accident, was not engaged in carrying passengers for hire; in fact, had no passenger, but that at said time the driver was riding to his line from breakfast with the jitney sign covered; that defendant, Interstate Casualty Company's bond, specifically provided that the policy, or bond, was issued to cover the operation of the automobile named and numbered therein, and no other, and it was expressly stipulated that no other vehicle would be substituted or operated under said numbers, nor would any change be made in the route mentioned in the application for license without the written consent of the Public Service Commissioner of the city of Houston, and the written indorsement permitting said change duly authorized by the agent signing the policy, or others authorized to do so, and indorsed on said policy, otherwise said policy to become null and void. There was no evidence that any change had been made in the Montgomery route, and, indeed, no such claim was made, but that it remained as first set out in said ordinance. The application was for license to operate a jitney on and over the Montgomery route between the hours of 6 to 8 a. m., and 11 a. m. to 1 p. m., and 4 to 6 p. m., and the license granted by the city was for the operation of a jitney on and over the Montgomery route during the hours mentioned. The bond executed by the defendant, Interstate Casualty Company, covered damages growing out of the operation of the named jitney on and over the Montgomery route; while plaintiff alleged, and the proof showed, that the accident occurred on Hardy street, at least two blocks away from and off of the Montgomery route, and at an hour of the day not set forth in the application and license.

That being the undisputed evidence, the contention of appellant must be sustained, for to do otherwise would be to ignore and set aside the solemn terms of a contract made in consonance with law, and to read into it conditions and liabilities never agreed to nor contemplated by the parties to the contract. Milliron v. Dittman, 180 Cal. 443, 181 Pac. 779; Youngquist v. Droese Co., 167 Wis. 458, 167 N. W. 736; Insurance Co. v. Krenek, 144 S. W. 1181; Norris v. China Traders' Ins. Co., 52 Wash. 554, 100 Pac. 1025; Western Indemnity Co. v. Industrial Accident Commission (Cal. App.), 185 Pac. 306; Elder v. Federal Ins. Co., 213 Mass. 389, 100 N. E. 655; Orient Ins. Co. v. Van Zant-Bruce Drug Co., 50 Okl. 558, 151 Pac. 323; Harti-

gan et. al. v. Casualty Co. of America, 227 N. Y. 175, 124 N. E. 789; Royalty Indemnity Co. v. Schwartz, 172 S. W. 581; Fidelity & Casualty Co. v. Palmer Hotel Co., 179 Ky. 518, 200 S. W. 923, L. R. A. 1918 C, 808; Mannheim Ins. Co. v. Charles Clarke & Co., 157 S. W. 291; Huntley v. Providence Washington Ins. Co., 77 App. Div. 196, 79 N. Y. Supp. 35; Harris v. St. Paul Fire & Marine Ins. Co. (Sup.), 126 N. Y. Supp. 118; Langworthy v. Oswego & O. Ins. Co., 85 N. Y. 632.

The written policy or bond which constitutes the contract of appellant declares that appellant insures against loss from liability imposed by law upon assured for damages caused by or resulting from the use of the automobile in question, while being operated in the jitney service on the Montgomery route. It seems clear to us that the provisions of the ordinance, license, and bond authorizing the use of the car in the jitney service on the Montgomery route only, constitutes a limitation on the promise to pay, and that, unless the accident occurred and the damage arose on the Montgomery route, and while the jitney was being operated as such, appellant is not liable. Suppose the city ordinance of the city of Houston had not divided the city into routes, but had simply provided for the licensing of jitneys to operate within the city limits, and that appellant had issued its policy or bond covering damages growing out of the operation of the jitney within the limits of the city; and then suppose that the jitney in question had gone without the city limits and while outside the city limits had run over and killed the child—would or could there be any contention that appellant was liable by reason of its bond covering operations within the city limits? Certainly not. Then how does the supposed case differ in principle from the case at bar? In the supposed case the ordinance provided for the licensing of jitneys to operate anywhere within the city limits, and the bond was given to cover operating within the city limits, the damage occurring without the city limits. In the instant case the city ordinance divided the city into jitney routes, numbering and describing each by metes and bounds, just as the city is described by metes and bounds, as a whole. License was granted, under the ordinance, to operate a jitney within the limits of the route named in the application, and the bond covers operations within said route only, and the damage occurred outside of the limits of the route named. We can conceive of no difference, and since there could be no liability in the supposed case, there certainly can be none in the instant case.

There are other assignments, but we do not deem it necessary to discuss them. Believing that under the pleadings and the facts no liability was shown against appellant, we reverse the judgment and here render the judgment that should have been rendered by the court below, that plaintiff take nothing as to the defendant, Interstate Casualty Company.

Reversed and rendered.

NOTE—*Territorial Liability Under Jitney Bond.* —Under a statute requiring a permit and bond for the operation of motor vehicles for hire in cities of the first class, it was held that liability on their bond for injuries received, due to negligent operation, is limited to injuries which occur within the limits of such cities, in view of the dominant purpose of the statute to regulate only operation in cities of the first class and to require no permit for machines operating outside of such limits. Bartlett v. Lanphier, 94 Wash. 354, 162 Pac. 532.

ITEMS OF PROFESSIONAL INTEREST.

POWERS OF EXPULSION FROM PRIVATE BODIES.

The Common Law of England, as a general rule, does not permit one private person to exercise the right of imposing *positive* sanctions upon another, such as corporal correction, forfeiture of property, and imprisonment; these functions are very properly reserved for public officers or magistrates. A limited exception occurs in the case of persons who are legally in a state of pupillage, such as infants, apprentices, and lunatics in the custody of their natural guardians. Nor does the law, as a rule, allow one person to obtain by contract the power of imposing on another fines or pecuniary penalties or forfeitures; both common law and equity lean against these. And even *negative* sanctions are viewed with disfavor by the law; boycotting and blacklisting have always been regarded with dislike as liable to abuse, and even combinations to avoid the society of an individual are odious to the law.

It is in accordance with this tendency that certain natural rights of a person's colleagues, business or social, are subjected by our law to very considerable limitations. At first sight, it might seem obvious that a man's partners should be able to expel him from the firm if ever they get dissatisfied with him. The expulsion of a discordant personality from a club seems equally a matter of obvious common right. So, too, the expulsion of a child from

school. And all those rights exist in law, but they have to be exercised with caution. The Common Law decidedly leans against them. A brief discussion of this in the light of a few more or less modern cases may be useful. We do not propose to refer to the right of expelling an individual from Parliament, or a local authority, or a professional body, for these are matters of public, not private, right; indeed, they are mostly regulated by statute. We shall confine ourselves strictly to matters *juris privati*. For this reason we exclude from consideration even the right to expel a child from a public elementary school, since this is largely regulated by the Education Code of 1910, ss. 51 to 53, which give power to refuse admission to a child on the ground of non-age, ill-health, and certain mental or physical defects, and perhaps on any "reasonable" ground (see the judgment of Channell, J., in Wilford v. West Riding, 1908, 1 K. B. 685, *et seq.*). The question of expelling a boy, from a school which is not controlled by the State, however, rests on a different footing and is within the ambit of this article.

The first case we will consider is the right of expulsion from a partnership. In the case of a partnership at will, of course, no question can arise; either partner can give notice to dissolve the partnership at any time. In the case of a partnership for a fixed term, however, the case is different. In certain cases the partnership deed vests in the majority partners to rescind the partnership or to obtain an order of recission from the court; these are not relevant to our present purpose. The question we have to consider arises when the partnership deed vests in the majority of the partners express power to expel one of their number. Here the mode of exercising of the right is governed by one simple test, whether or not the deed gives power to expel in the event of a partner committing certain specified acts. If it does, then on proof that one of these acts has been committed, the majority have an absolute right to expel the partner without hearing his explanation; although if this right has been exercised *mala fide* for some improper reason, the court will restrain the partners from acting on it. If the deed does not specify the acts, then the partners must act judicially, as well as *bona fide*, and give an opportunity for an explanation to a partner before they expel him. This seems to be the broad general principle, as elucidated in Green v. Howell (1910, 1 Ch. 495).

The next case to be considered is that of a club or society in which all the members have a common interest in the assets of the institution. In such a case, the position is analogous to that of a partnership. In both the case of a firm and that of a mutual society, the member has not merely contractual rights, but a proprietary interest, either at common law or as a beneficiary in equity of property held in trust for the members. Therefore, such rights of property will be protected by the court against forfeiture. The result of this rule is that very strict proof is cast upon the ruling body that all conditions precedent to the existence of a right to expel have been satisfied. Some of these conditions are the creation of "natural justice and equity"; others of the regulations governing the club or society. Put shortly, they are four in number: First, the expelled person must have been found guilty of some act which, under the rules, can be penalized by the forfeiture of his privileges. Secondly he must have been found guilty after a proper judicial enquiry in which reasonable rules of procedure have been observed, such as giving him notice of the charge and an opportunity of defending himself. Thirdly the judging body must act judicially and be composed of impartial persons; the presence of the accuser on the committee would probably invalidate its decision. Lastly, they must act *bona fide*. These rules would seem to follow clearly from the judgments of the Court of Appeal in the latest case, that of Young v. Ladies' Imperial Club, Ltd. (1920, 2 K.B. 523). The power of expelling a member is not inherent in a club or other society, a partnership, or a company. But if it is not in their constitution, the latter can usually be altered so as to insert it, provided its constitution provides for alteration of the rules at all. The alteration must be made *bona fide* and for the benefit of the members as a whole (per Lord Lindley, in Allen v. Gold Reefs of West Africa, Ltd., 1900, 1 Ch. 656).

Some illustrations of this may be given. The rules must be strictly complied with, e. g., every member of the committee possessing disciplinary powers must be properly summoned to the meeting before which the matter comes even if he waives his right to a summons (Re Portugese Consolidated Mines, Ltd., 1889, 42 Ch. D. 161). Reasonable notice must be given to the accused (Gray v. Allison, 1909, 25 T. L. R. 531). Notice of the meeting must be given within the times provided by the rules; otherwise the proceedings are invalid (Labouchere v. Wharncliffe, 1879, 13 Ch. D. 346). These are only a few of the numerous decisions which illustrate the effect of irregu-

larities on resolutions of expulsion.

Where the club or society is not mutual but the private enterprise of proprietors, the rights of a member depend on contract and not on the possession by him of a proprietary interest. It is therefore questionable how far, in such a case, he can claim an injunction to protect his membership. It is probable that in most cases his right is one of damages only (Rigby v. Connol, 1880, 14 Ch. D. 482). But even where a right is based solely upon contract, it may confer on the individual possessing it an irrevocable license to use premises for the purposes contemplated in the contract, in which case he can possible obtain an injunction.

In any event, whether the remedy be by injunction or only by damages, the member of such a club can only be expelled under the same circumstances as would be the case were the club one in which he had a proprietary or beneficial interest. To expel him otherwise amounts to breach of contract.

The right to expel a child from a school not governed by the Education Code for elementary schools is similar to the right of expulsion from a club. It depends on contract alone when the school is not endowed, but on the equitable proprietary rights of a beneficiary, if the boy is a scholar of an endowed school (Wood v. Prestwich, 27 T.L.R. 268). Generally speaking, it is not necessary to prove any formal act of procedure on the part of the school authority; the right to expel is vested in the headmaster (unless otherwise provided by the trust deed or by the contract between parent and master), and need only be exercised *bona fide* by him. Proof of judicial action is not necessary in his case (*ibidem*). The power, however, must not be exercised arbitrarily, but only in a case where such discipline is "reasonable" (per Cockburn, C. J. in Fitzgerald v. Northcote, 4 F. & F., at p. 685).—*Solicitor's Journal.*

WORKMEN'S COMPENSATION IN ILLINOIS.

The Workmen's Compensation Act was passed in Illinois in 1913. The law and its subsequent amendments were enacted by the legislature after having been first recommended and agreed to by representatives of both employers of labor and employees, in furtherance of the common weal of those engaged in industries known as hazardous.

During 1921, over 50,000 industrial accidents were reported to the Illinois Industrial Commission. The sum of compensation paid or awarded during the same period amounts to $9,290,709.00. Notwithstanding these significant totals, we know that there are communities in this state where the ratio of accidents reported is not at all commensurate to the number of persons employed in industrial pursuits, as compared with other communities. Cases frequently come to our attention where, through lack of knowledge of the provisions of the compensation law, often on the part of both employer and employee, injured workmen or their beneficiaries are deprived of the benefits prescribed This applies to every community in the state.—ERNEST WITHALL, Chairman, Industrial Commission of Illinois, in *Chicago Legal News.*

CORRESPONDENCE.

THE DUTY AND RESPONSIBILITY OF THE BAR IN THE SELECTION OF THE JUDICIARY.

Editor, Central Law Journal:

The article in the Journal for December 23, 1921 by Mr. Guthrie under the caption, "The Duty and Responsibility of the Bar in the Selection of the Judiciary," being addressed especially to the Bar is appropriately answered by a member of the Bar of many years standing.

It seems to me that appeal to the Bar to try to educate the masses of the electorate in such ways that they will select for judges only good and upright lawyers of judicial temperament, is a waste of time. All the discussions upon the problem of how to secure good judges start out with admitting that on the whole the elective system is *not the best.* That admission is based upon the fact that for over a century, we have had before us a system of securing a judiciary which has produced satisfactory results. I refer to the Federal Judiciary.

In your Journal of December 16, 1921, on page 419, you say that there are now one hundred fourteen judges, all of whom are appointed for life or good behavior, by and with the advice of the United States Senate. We have all kinds of propositions promulgated presenting proposed amendments to the Constitution of the United States, but, up to this time, no one has proposed to amend the Constitution of the United States so as to make the Federal Judiciary elective by the people. This demonstrates that the system is so good, that, there is absolutely no discontentment with it on the part of any class of citizens of the United States. I think, if the Bar

of the United States wants to do something practical towards making the State Judiciary nearer equal to its duties than it now is, they would advocate the adoption of a system which has now, for over a century, proved itself absolutely satisfactory to every one of the more than one hundred million inhabitants of the United States.

Let the propaganda of the Bar be directed towards abolishing the elective system for securing judges for our courts, and establishing a system analagous to that which has proved itself satisfactory, namely "The Federal System."

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IS STATE EXECUTIVE EXEMPT FROM AREST?

Editor Central Law Journal:

Rex non potest was the law of Rome; it is the law of all civilized countries; it involves phases of *salus populi suprema lex*, Broom's first maxim which involves a series of maxims which all students ought to be familiar with; one of these is *necessitas inducit privilegium quoad jura privata* (necessity excuses one acting under its influence). We must have government and the heads selected to carry it forward are given absolute immunity in the performance of their duties. This is the law of the countries who have borrowed the civil law just as the provinces of England have borrowed the law of the mother country, Virginia borrowed the law of England and of the Federal government. Illinois was a part of Virginia, accordingly its law became the law of Illinois. In 1880 in P. v. Dulaney, 96 Ill. 504-512, it was recognized that both the constitution and a statute gave to the state and its officials immunity from litigation; of course this included the governor at least, from arrest. Accordingly it can be deduced that the maxim was the law of Illinois in 1880, and now the question is when was the old law abrogated or changed? If the statute mentioned in P. v. Dulaney, were repealed did not this revive the old law according to a rule of construction of statutes? Here let us ask how have we shaken or abrogated the old law? Does not it still govern us? Is not its policy still with us? Why exempt municipal corporations from garnishment and state officers from arrest and not all? The maxim was involved in the case cited but it was not quoted and translated as fundamental law well might be.

If the president of the United States were to commit a grave crime in Illinois, who could arrest him? What court could issue process to arrest him?

If a foreign ambassador were to commit a grave felony, who could arrest him; what court could order him under bonds or to jail?

If a potentate was commiting a violent felony what law might stay him other than the law of self-defense (which arises from necessity above mentioned)? *Receditur a placitis* quoted in the Primer.

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HUMOR OF THE LAW

Her: You're good at anagrams, aren't you?

She: Sure, spring one.

He: Here it is. Take away my first letter, take away my second letter, take away all my letters, and I am still the same. What am I?

She: Your'e a postman, you poor fish.—*Science and Invention.*

A certain professor was endeavoring to explain to his class that both parents have an equal influence upon the life of a child.

"For," he concluded gravely, "you will find that a man is as much the son of his father as he is the daughter of his mother."—*American Legion Weekly.*

The lawyers seeking admission to the bar today probably look back with regret to the days when a smile and a pleasant word with the judge was about all the examination it took to be admitted to the bar.

In England recently, according to Law Notes (London) an old solicitor related the story of his entrance examination. The judge asked him to whom he was articled: expressed great approval of his principal. "A sound man. I know him well—he sent me many briefs when I was a junior." His Lordship also knew something of his father: he added: "If I am not able to call on your principal, give him my best regards, and particularly remember me to Mrs. —— (his wife). I have a great respect and admiration for Mrs. ——. Don't forget." His Lordship then turned to his writing. Our old friend waited for some legal questions. The judge asked what he waited for, and our old friend said he was there for examination. "Oh! that's all right," said his Lordship, "you have passed. I'll see to that. Don't forget my best respects to Mrs. ——."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Automobiles**—Collision.—In an action for injuries to a motorcyclist in a collision with defendant's automobile, driven onto the highway from a park driveway, plaintiff's negative testimony that he did not hear defendant sound the horn held insufficient to justify submission of such issue to the jury, in the face of affirmative testimony of five witnesses, three disinterested, that the horn was sounded.—Mitchell v. Newham, N. Y., 190 N. Y. S. 459.

2.——Negligence. — Where evidence showed that plaintiff, while walking on the sidewalk of a traveled way in the exercise of ordinary care, was struck by defendant's automobile truck, while driven negligently by a servant while in the performance of his work, plaintiff was entitled to recover damages, in the absence of circumstances requiring a finding of justifiable cause for driving the truck on the sidewalk.—Forzley v. Bianchi, Mass., 132 N. E. 620.

3. **Bankruptcy**—Advance Payment.—An advance payment made to a bankrupt on the purchase price of trucks, to be delivered on demand, held to have become immediately the property of the bankrupt seller, subject to the contract, and not to be held in trust by the bankrupt, where delivery was not ordered.—In re Superior Motor Truck Co., U. S. D. C., 275 Fed. 623.

4.——Discharge.—Where a creditor is present in the bankrupt court, and fails to object to the discharge of the partners because they failed to file a schedule of their individual property, but consents to a composition and accepts the amount due thereunder after a confirmation by the court, he cannot afterwards, in a suit in a state court complain of the irregularity of the discharge by the bankruptcy court, especially so where the order fully discharges the debt as to all of the partners as well as the partnership.—Nashville Saddlery Co. v. Green, Miss., 89 So. 816.

5. **Banks and Banking**—Money Telegraphed.—In action against telegraph company for failure to deliver money telegraphed to plaintiff with waiver of identification, complaint alleging that plaintiff appeared at defendant's office and demanded the money, but that it was refused until he could produce positive evidence of his identity, held insufficient for failure to allege that defendant's agent believed the person who demanded the money to be the plaintiff, or that defendant's agent had reason to believe that the plaintiff was the party entitled to receive the money, or that the agent's action was inspired by malice, or that he did anything other than exercise his judgment in the matter.—Taggart v. Western Union Telegraph Co., N. Y., 190 N. Y. S. 450.

6.——Separate Funds of Wife.—If the validity of an agreement by which a bank contracted to retain a part of the wife's separate funds, deposited by her husband, subject to her check only, depended on its knowledge of a separation of the husband and wife, it was chargeable with knowledge by the fact of the making of such agreement, it including terms by which the wife was given a certain amount in cash and a certain amount was deposited subject to wife's check, all from her funds.—Waggoner Bank & Trust Co. v. Warren, Tex., 234 S. W. 387.

7. **Bills and Notes**—Valuable Consideration.—Where plaintiff, for the purpose of making a loan to defendant for which he received its note for $800, executed his own note for the same amount to a bank with which defendant discounted it, and plaintiff subsequently paid such note by paying part of the principal in cash and giving a new note, thereby discharging defendant from liability thereon as indorser, the note held by plaintiff was given for a valuable consideration; the note given to the bank not being an accommodation note, or a mere loan of credit.—Hills v. People's Express, Mass., 132 N. E. 670.

8. **Brokers**—False Statements.—A real estate agent employed by plaintiffs to make an advantageous disposition of their farm, being unknown to plaintiffs, defendants' agent to make an exchange of their building for plaintiffs' farm, plaintiffs are not bound by his false statements as to the building, but defendants are liable therefor whether or not they authorized or knew of them.—Duguid v. Coldsnow, Ind., 132 N. E. 659.

9. **Carriers of Goods**—Inspection.—A carrier is not required to inspect carloads loaded by shippers to ascertain whether goods have been properly packed before proceeding to transport them.—Hines v. Buchanan, Va., 109 S. E. 219.

10.——Right to Possession.—An oil company was not authorized to take possession of a tank car for any purpose without first having paid a draft drawn on it, or without having obtained the permission of the shipper; the shipment being what is ordinarily called an "order notify" shipment.—Reed Oil Co. v. Smith, Ga., 109 S. E. 171.

11. **Champerty and Maintenance** — Cancellation of Lease.—In action to cancel oil lease, the making of an alleged plaintiff's champertous contract with third person, to whom he agreed to execute another lease, to bring action to cancel the existing lease, held no defense; the cause of action for cancellation of lease not depending on the alleged champertous contract.—Heyden v. Kennedy, Ark., 234 S. W. 163.

12. **Chattel Mortgages**—Description.—A chattel mortgage from father to son, describing the property mortgaged as "sufficient amount of lumber, shingles, brick, roofing, and cement in my possession," was void as to judgment creditors for indefiniteness of description.—Brown v. Camp, U. S. C. C. A., 275 Fed. 612.

13. **Constitutional Law** — Due Process. — Assessment of railroad property abutting on street for street improvements upon the basis of feet frontage, without giving the railroad company an opportunity to be heard, does not constitute the taking of property without due process of law in violation of the Constitution.—Atlanta & C. A. L. Ry. Co. v. City of Easley, S. C., 109 S. E. 285.

14.——Due Process.—The Legislature of Arkansas by Road Laws 1919, vol. 1, pp. 1040-1042, §§ 20, 21, authorized the board of commissioners of a road district, after hearings, to make assessments of benefits on property for the construction of a highway, subject to the right of appeal to the courts by the property owners. Pursuant to such authority the board, after a hearing, made an assessment of benefits against the property of a railroad company in the sum of $2,767.50, which was duly entered on the tax books. By Sp. Act Feb. 23, 1920, No. 308, the Legislature assumed to increase such assessment to $25,000. Held, that such action was arbitrary, and the act unconstitutional and void, as taking the property of the railroad company without due process of law, and that the assessment made by the board was the only valid asesssment.—Road Improvement Dist. No. 2 v. Missouri Pac. R. Co., U. S. C. C. A., 275 Fed. 600.

15. **Corporations**—Compliance With Statute.—When a corporation from another state complied with Comp. Laws Mich. 1915, § 9066, and received certificate of authority to do business in the state in accordance with such provisions, the transaction constituted a contract between it and the state of Michigan, entitling it to carry on business in such state on the terms and conditions prescribed by such statute.—Republic Acceptance Corporation v. De Land, U. S. D. C., 275 Fed. 632.

16.——Corporation "de Jure."—Where the existence of a corporation had expired under Rev. St. 1908, §§ 847, 854, and the power given by sections 891, 892, to extend the term had not been exercised within a year, as required by the statute, stockholders conducting the business could not escape liability for a tort committed during the year on the theory that the corporation remained such de jure.—Bonfils v. Hayes, Cal., 201 Pac. 677.

17. **Criminal Law**—Location of Distillery.—In a prosecution for manufacturing and possessing spirituous liquors for sale, an instruction that the location of the distillery on the land of another should be considered as tending to show that defendant was not guilty was properly refused as invading the province of the jury and expressing an opinion on the weight and effect of the evidence.—State v. Crouse, N. C, 108 S. E. 911.

18. **Damages**—Cutting Trees.—In assessing damages for cutting trees in a timber grove, the jury might take into consideration the use to which the grove should be put; the measure of damages not being the value of the timber.—Babcock v. Postal Telegraph-Cable Co., S. C., 109 S. E. 116.

19. **False Pretenses**—Insufficient Indictment.—Under Rev. Code 1915, § 4757, defining the offense of obtaining chattels, money, or securities by false pretense, an indictment alleging that defendants did obtain a certain check for the payment of money, to-wit, for the sum of $1,750 of the moneys, goods, chattels, and property of the said E., but not giving the name of the maker or payees or bank upon which drawn, or any indorsements, was insufficient for matter of description.—State v. Moore, Del., 115 Atl. 308.

20. **Food**—Guaranty of Quality.—Printing on a package of butter, whereby defendant professed to act as distributor of such brand of butter and guaranteed the correctness of the weight when packed, cannot be construed as an adoption by the defendant of the product as its own so as to render it liable for a deleterious condition of the butter, if acquired in good faith from a reputable manufacturer.—Fleetwood v. Swift & Co., Ga., 108 S. E. 909.

21. **Frauds, Statute of**—Insufficient Memorandum.—A check signed only by the purchaser is not a sufficient memorandum in writing to take a contract for the sale of land out of the statute of frauds, for in every sale of land there must be a writing signed by vendor, who is the party to be charged.—Dutell v. Mullins, Ky., 234 S. W. 192.

22.——Validity of Contract.—Sales Act, Pa., § 4, providing that contracts for sale of property of the value of $500 or more "shall not be enforceable" unless in writing, or unless some part of property has been received, or some part of the price paid by the buyer, as construed by the Supreme Court of the state, which construction is binding on the federal courts, relates to the validity of the contract, and not to the remedy, and a Pennsylvania contract, invalid thereunder, will not support an action in another jurisdiction wherein a similar law is not in force.—Franklin Sugar Refining Co .v. Holstein Harvey's Sons, U. S. D. C., 275 Fed. 622.

23. **Highways**—Heavy Vehicles.—Under a resolution of the board of supervisors prohibiting the operation on the highways of heavy vehicles and heavily laden wagons or trucks when the roads were wet so as to be materially damaged thereby, the guilt or innocence of one charged with a violation did not depend upon whether reasonable persons were using the roads with similar wagons or trucks, and he was bound at his peril to determine for himself whether he would use the road.—Standard Oil Co. v. Commonwealth, Va., 109 S. E. 316.

24.——Stop Notice.—Code Civ. Proc. § 1184, requiring owner to withhold amount due contractor on service of stop notice, and making fund withheld subject to claims of laborers and materialmen by whom notice was given, held inapplicable to claims of laborers and materialmen against contractor constructing public highway, required to give bond under St. 1919, p. 487.—McMorry v. Superior Court, Cal., 201 Pac. 797.

25. **Homestead**—Mortgage.—A mortgage by a married man upon his homestead is void unless his wife joins; but when the husband falsely and fraudulently represents to the mortgagee that he is unmarried, and thereby gets a loan upon the faith of a mortgage without his wife joining, he will not be heard in a court of equity, after the death of his wife, he remaining the owner, to assert its invalidity, but will be held estopped by his misrepresentation.—Bozich v. First State Bank, Minn., 184 N. W. 1021.

26. **Indictment and Information**—Defective Indictment.—An indictment charging a violation of Acts 1919, p. 1086, which became effective November 30, 1919, which charged the commission of the offense on September 30, 1919, and thereby covered a period of time during which the acts charged did not constitute offense, was demurrable.—McReynolds v. State, Ala., 89 So. 825.

27. **Infants**—Waiver of Right.—A juvenile accused of a felony may waive his legal right to be proceeded against as a juvenile, and stand trial as any other person so situated.—Fifer v. State, Tex., 234 S. W. 409.

28. **Injunction**—Preliminary Writ.—In a suit to enjoin the commissioners of a municipality from trespassing on complainant's land in constructing a sidewalk, where it appeared that some damage to shrubbery, grass, and crops had already been done, and that the only possible future damage would be the occasional walking over a narrow strip in finishing the nearly completed work, held, that such injury was not of so serious a nature as to justify a preliminary writ.—Nebeker v. Berg, Del., 115 Atl. 310.

29.——Violation of Lease.—Lessee of corner store premises, entitled under lease to right to occupy corner store covering same space on lessor's construction of new building on same site under the terms of the lease, in same manner as if such new building had been originally leased to him, held entitled to restrain lessor from constructing new building, not providing for space to be occupied by such lessee.—United Cigar Stores Co. v. Levin, N. Y., 190 N. Y. S. 469.

30. **Insurance**—Change of Beneficiary.—Where the provisions of a fraternal benefit certificate provide that all transfers of the beneficiary shall be made upon the books of the grand lodge, under the direction of the general secretary and treasurer, and all transfers made in any other manner shall be null and void, the insured cannot change such beneficiary by making a request under oath in writing and mailing the same to the grand lodge, where such request does not reach the office of the general secretary and treasurer until after the death of the insured.—Allison v. Brotherhood of Railroad Trainmen, Idaho, 201 Pac. 838.

31.——Construction of Policy.—Where the language of a special provision in an accident insurance policy is susceptible of but one construction, and that construction inevitably leads to an unreasonable or absurd result, and substantially defeats the object and purpose of the entire contract, such provision will be rejected as inoperative, and, ignoring the same, the court will look to the whole instrument, and gather therefrom the manifest intention and purpose of the parties and adjudicate accordingly.—Rathbun v. Globe Indemnity Co., Neb., 184 N. W. 903.

32.——Default in Payment.—Though a life insurance policy is payable in monthly installments, the full amount becomes due and payable on the insurer's default in making payments as prescribed; the law frowning on a multiplicity

of cases where one action will suffice.—Milburn v. Royal Union Mut. Life Ins. Co., Mo., 234 S. W. 378.

33.——Forfeiture.—Where a life insurance policy provides that the insured shall share in the profits of the company, to be ascertained annually, and that at the end of the second insurance year, and on each anniversary thereafter, such dividend as shall have been apportioned by the company to the policy will, at the option of the insured, be applied toward the payment of premiums, and where the application, which is made a part of the contract of insurance, contains express directions that all dividends shall be applied toward the payment of premiums, after the end of the second insurance year, the company cannot declare the policy forfeited for non-payment of premiums until it has given notice to the insured of the amount of the dividend apportioned to the policy.—Owen v. New York Life Ins. Co., Miss., 89 So. 770.

34.——Good Health.—In an action on a life insurance policy, questions in the application which as to whether insured had consulted a physician within five years and had had pleurisy, were answered "No," testimony, while tending to show that he had had pleurisy, held not to show that he knew or should have known it when examined.—Sligh v. Sovereign Camp, W. O. W., S. C., 109 S. E. 279.

35.——Military Service.—That the local camp clerk of a fraternal benefit association knew that insured was in military service and told the beneficiary that he was looking after the payment of the dues, which he collected from one whom insured had instructed to pay them, held not to estop insurer from relying on failure to notify the sovereign clerk and to pay an extra premium, as required by a reduction of benefits clause in the insurance contract.—Sovereign Camp, W. O. W., v. Peaugh, Ark., 234 S. W. 161.

36.——Misrepresentation.—The contention that Rev. St. 1919, § 6142, concerning materiality of misrepresentation in procuring insurance, does not apply to life and health insurance policies providing for monthly sickness, indemnity is without merit.—Makos v. Bankers' Acc. Ins. Co., Mo., 234 S. W. 369.

37. **Intoxicating Liquors**—Admissible Testimony.—In prosecution for having possession of whisky, testimony that fruit jars similar to one found in defendant's room containing whisky, some of which had the odor of the same kind of whisky as that found in defendant's room, were found on roof adjoining building near a window of defendant's room ,which opened out onto the roof, held as admissible, the jars on roof being in such close proximity to and connected with defendant's room as to be a part of the locus in quo, and as to make it a question of fact for the jury as to whether or not the jars had been put on the roof by defendant, or under his direction.—Hogg v. State, Ala., 89 So. 859.

38.——Insufficient Evidence.—Where a defendant is convicted upon the charge of the unlawful sale of intoxicating liquor, and the testimony shows that the witness went to the defendant's place to get some whisky, that he asked the defendant if he had "anything," and that finally the defendant told him he had a little "something," which "something" he placed in a half-gallon fruit jar, which "something" was white in color and for which the witness paid the defendant $10, and witness did not know whether it was whisky or whether it was intoxicating, that he made no examination of the contents of the fruit jar, held, that this testimony is insufficient to sustain a conviction, and that the peremptory instruction requested by the defendant should have been granted.—Parham v. State, Miss., 89 So. 775.

39.——Manufacture Unlawful.—Although subsequent process of distillation was necessary to improve palatability or make mash into whiskey, if the mash was intoxicating, then its manufacture was unlawful, under Acts 1915, p. 98, No. 30.—Graham v. State, Ark., 234 S. W. 166.

40.——Use of Automobile.—Under Laws 1917, c. 294, where an automobile is seized while engaged in the transportation of intoxicating liquors, a purchaser of the car at the sale acquires all rights of the offending party therein, whether as mortgagor, purchaser under conditional sale, lease, or what is termed a "Holmes note," subject to the rights of an innocent claimant who appears and establishes his lack of knowledge of or consent to the unlawful use; failing such claim, the interest of the offending person using such vehicle will be presumed to be absolute.—State v. Paige Touring Car, Me., 115 Atl. 275.

41.——Search and Seizure.—Code Cr. Proc. § 802-b, subd. 5, provides that peace officers discovering person in the act of transporting intoxicating liquor unlawfully may seize the same, and subdivision 6 provides for seizing outside of a private dwelling without warrant; but such statute does not authorize a search without warant or process of any kinds as a means of discovering or finding (section 177).—State v. One Hudson Cabriolet Automobile, N. Y., 190 N. Y. S. 481.

42.——Search and Seizure.—In a proceeding under the Excise Law to determine disposition of intoxicating liquor, an unauthorized search warrant being disregarded, held that, under Penal Law, § 1216, the burden was upon the alleged owner to show that the place where the liquor was seized was his private dwelling, and also that it was unnecessary for the people to negative the exception in subdivision 6.—People v. 738 Bottles of Intoxicating Liquor, N. Y., 190 N. Y. S. 477.

43. **Landlord and Tenant**—Assignment of Lease.—In absence of an express covenant, the assignor of a lease does not impliedly warrant his lessor's title, or impliedly warrant that his assignee shall have the right of peaceable and quiet enjoyment, and no agreement for such covenants will be implied in favor of a produced purchaser by a broker, or one authorized to procure such a purchaser, where the only agreement is to "transfer" the lease.—Miles v. United Oil Co., Ky., 234 S. W. 209.

44.——Holding Over.—Ky. St. §§ 2295, 2296, relating to the rights of hold-over tenants, held applicable only to lessees remaining in possession after termination of leases, by express terms of lease or by lessees' failure to take advantage to extend the term according to the method provided therefor in the lease, and not to lessees remaining in possession under leases providing for renewal at lessees' option, not requiring notice to lessor of election to renew.—Klein v. Auto Parcel Delivery Co., Ky., 234 S. W. 213.

45. **Mandamus**—Reporter's Transcript.—Under C. S. § 6886, when a reporter's transcript of the testimony is duly and seasonably lodged with the clerk of the trial court, and duly delivered to the trial judge for settlement, and is in such condition that he can properly settle it so that it will conform to the truth mandamus will lie to compel a settlement thereof upon the refusal of the trial judge so to do.—Johnson v. Ensign, Idaho, 201 Pac. 723.

46. **Master and Servant**—Assault by Servant.—Such facts warranted the jury in their discretion in awarding exemplary damages. Such damages may be recovered from the master, even though he did not participate in, authorize, or ratify his servant's acts if done in the course of the performance of the duties of his employment and within the scope thereof.—Schmidt v. Minor, Minn, 184 N. W. 964.

47.——Casual Employment.—One who is employed to work in an automobile garage without any understanding as to the time of his employment, or the particular character of labor he is to perform, and assembles and sets up automobiles and performs such other labor in and about the garage as he is directed to do by the foreman or manager, and such work is incident to, and in the usual course of, the business, is held not to be casually employed within the meaning of the Employers' Liability Act.—Nedela v. Mares Auto Co., Neb., 184 N. W. 885.

48.——"Employee."—Where driver of taxicab was discharged from his employment and thereafter, without employer's knowledge or consent, took on a trip persons who had the day before requested the employer that he be chosen as driver for the trip, and was killed on the trip, and the passengers thereafter paid the employer

for the trip, the relation of master and servant did not exist under the Workmen's Compensation Act at the time he was killed, and his dependents were not entitled to compensation; neither the doctrine of ratification nor estoppel being applicable.—Burke v. Industrial Commission, Col., 201 Pac. 891.

49. **Mortgages**—Fixtures.—When a mortgage expressly covers a lot and all improvements situate thereon, it includes fixtures which have become part of the realty, and a contemporaneous oral agreement that the mortgage does not cover fixtures is not admissible as between the parties and their privies.—Beebe v. Pioneer Bank & Trust Co., Idaho, 201 Pac. 717.

50. **Municipal Corporations**—Local Improvements.—The property and franchise of street railways laid along a street within the effects and benefits of a local improvement may be assessed under the principle relating to abutting owners.—City of Durham v. Durham Public Service Co., N. C., 109 S. E. 40.

51.——Notice of Injury.—A notice of injuries required by Rev. St. 1919, § 7955, was not rendered void by the fact that the claimant's affidavit thereto was taken over the telephone, in the absence of any showing of fraud or mistake in connection therewith.—Kuhn v. City of St. Joseph, Mo., 234 S. W. 353.

52.——Interest on Delinquent Collections.—Comp. Laws Okl. 1909, § 727, which is part of an act regulating paving in cities of the first class, and authorizing the issuance of bonds or certicates for the cost of paving, to be paid from special assessments, which may be payable in installments, provides that such assessments and interest thereon shall be collected by the city clerk, and that the proceeds shall be paid to the city treasurer, and shall constitute a special fund "to be used and applied to the payment of such bonds and the interest thereon and for no other purpose." It further provides that delinquent assessments shall bear interest at the rate of 18 per cent, and that the city clerk shall certify delinquent installments to the county treasurer, to be collected as other delinquent taxes and paid to the city treasurer, "for disbursement in accordance with the provisions of this act." Held, that under such statute, as construed by the Supreme Court of the state, the county has no interest in such delinquent collections, and that the 18 per cent interest collected thereon is for the benefit of the holder of the paving certificates.—Board of Com'rs v. Close Bros. & Co., U. S. C. C. A., 275 Fed. 608.

53. **Principal and Agent**—Joint Liability.—Where plaintiff obtained an option on the lands of another and employed one of the defendants as his agent to dispose of the lands, and the other defendants joined the first in a scheme to obtain an assignment of the option from plaintiff to themselves and complete a sale thereunder, in fraud of the plaintiff, plaintiff might bring an action against all for an accounting and recover a joint judgment, as those fraudulently aiding in the attempt of fiduciaries to obtain profits may be held liable regardless of sharing in the profits.—Smith v. Blodget, Cal., 201 Pac. 584.

54. **Railroads**—Authority of Freight Agent.—An agreement by a local freight agent for the railroad's purchase of a damaged shipment of goods is outside the scope of his employment and is not binding on the company.—A. Gauthier & Son v. Hines, Me., 115 Atl. 258.

55.——Crossing Signal.—The requirement of a city ordinance that the bell be rung on engines approaching a crossing is for the protection of employees as well as a warning to the public.—Cleveland, C., C. & St. L. Ry. Co. v. Mann, Ind., 132 N. E. 646.

56.——Employers' Liability Act.—This was a suit by an injured employee against the Director General of Railroads. The petition contained two counts—the first under the federal Employers' Liability Act; the second under the state law. The injury occurred while the plaintiff, with other employees, was engaged in demolishing an old trestle which was a part of an abandoned spur track. This spur track was not a part of any other track, served no purpose, and performed no function in connection with the operation of the railroad, and was not intended for future use in its operation. Held not a case within the federal Employers' Liability Act.—Gray v. Payne, Ga., 109 S. E., 179.

57.——Federal Control.—A railroad company is not liable to an employee for injuries sustained during operation of the road by the Director General of Railroads.—Barbee North Carolina R. Co., N. C., 109 S. E. 87.

58.——Negligence.—If a traveler's view is obstructed or his hearing of an approaching train is prevented, and especially if this is done by the fault of the railroad company and the failure to warn him, and, being lulled into security, he attempts to cross the track and is injured, having used his faculties as best he could under the circumstances, negligence will not be imputed to him, but to the company; its failure to warn him being regarded as the proximate cause of the injury.—Williams v. Randolph & C. Ry. Co., N. C., 108 S. E. 915.

59. **Set-off and Counterclaim**—Assignment of Chose.—A chose in action assigned before maturity is, in the hands of the assignee suing thereon, subject to offsets on account of claims or obligations against the assignor acquired by the defendant before notice of the assignment.—Nordsell v. Neilsen, Minn., 184 N. W. 1023.

60.——"Defense."—Proof of agency of plaintiff only results in permitting defendant to avail himself of any defense against the principal which he may have, and the right of set-off is neither a "defense" nor an "equity"; hence, under the Florida statute of set-off, which permits an affirmative judgment for defendant if any balance be found due him, where the plaintiff, in a suit on a note payable to a corporation was the agent and acting in the suit for the corporation, to which the note was indorsed and delivered by the makers, the latter could not interpose a plea of set-off for a claim against the corporation for breach of a separate contract.—Worden v. Gillett, U. S. D. C., 275 Fed. 654.

61. **Sales**—Antecedent Sale.—When the same goods are sold to two persons by conveyances equally valid, he who first lawfully acquires the possession will hold them against the other.—Bridgham v. Hinds, Me., 115 Atl. 197.

62.——Delay in Shipment.—Although potatoes sold were shipped, not by open bill of lading, which would have vested title in the buyers and thereby have imposed the risk of delay upon them, but by bill of lading to the sellers' order, "notify" the buyers, the sellers did not lose their right to sue for the purchase price of the potatoes because of the fact that they were delayed by war conditions of shipping, where the sales contract agreed that the sellers should not be held "liable or responsible" for any delay over which they had no control.—York & Fenderson v. Z. M. L. Jeffreys & Son, N. C., 109 S. E. 80.

63.——Stipulation.—A stipulation in a contract of sale that, "It is further agreed and understood that the title to the sawmill and appurtenances thereto belonging shall remain in the party of the first part (the seller), and in case the parties of the second part (the buyers) shall fail to meet any of * * * the conditions and agreements, the party of the first part can take charge of said property and dispose of same for the balance due on the purchase price," does not constitute an agreement that such property shall be taken in full satisfaction of the debt; and the seller, in case the property does not bring enough at a sale to pay the debt, may sue for and recover the balance due.—Rodgers v. Whitehead, Miss., 89 So. 779.

64. **United States**—Damage from Public Works.—To bind the government to pay the damages resulting to property from the construction of public works under the Fifth Amendment, there must be an implied contract to pay, and the circumstances may rebut the implication of a contract when what is done is in the exercise of a right and the consequences are only incidental.—John Horstmann Co. v. United States, U. S. S. C., 42 Sup. Ct. 58.

65. **Workmen's Compensation**—State Highway Commission.—The State Highway Commission of Virginia is not the employer of those working under it within Workmen's Compensation Act, §§ 2a, 8, providing that employers shall include the state, any municipal corporation within the state, or any political division thereof.—Smith v. State Highway Commission of Virginia, Va., 109 S. E. 312